

**DECISION**

**File No.: 01-0028**

**NOVA SCOTIA POLICE REVIEW BOARD**

**IN THE MATTER OF:** *The Police Act, R.S.N.S. 1989, Chapter 348 and the Regulations made pursuant thereto*

**- and -**

**IN THE MATTER OF:** An appeal in Form 13 by **CONSTABLE TODD TAYLOR** and a decision by Chief Ken MacLean of the Truro Police Service before the Nova Scotia Police Review Board.

**BEFORE:** Mr. Brian Creighton - Chairman  
Mr. Orville Symonds - Member  
Ms. Marion Ferguson - Member

**COUNSEL:** Mr. David Fisher - on behalf of Constable Todd Taylor  
Mr. John T. Rafferty - on behalf of Chief K. C. MacLean

**HEARING DATE:** Thursday, August 22 and Friday, August 23, 2002

**PLACE** Glengarry Hotel, (Salon "A") 150 Willow Street,  
Truro, Nova Scotia

**DECISION DATE:** November 2002

**DECISION:** Appeal Denied - Penalty Expanded with Conditions

On February 7, 2001 Sergeant Gregory Densmore of the Truro Police Department filed a complaint of insubordination against fellow officer Constable Todd Taylor in relation to a February 2, 2001 incident. On February 12, 2001 Constable Taylor was served with a Form 8 Notice of Allegation by Deputy Chief Glenn Rogers, who had been appointed by Truro Chief of Police Ken McLean, to investigate the complaint.

The allegation on the Form 8 is as follows:

*“Take Notice, that you are alleged to have committed a disciplinary default under the regulations made pursuant to the Police Act by on or about 02 Feb 2001 did commit the disciplinary default of insubordination by word and action contrary to Section 5(1)(b)(i) of the Nova Scotia Police Act.”*

On March 27, 2001 Constable Taylor was served with a Form 10 Notice of Meeting, which required him to appear before Chief MacLean to answer the allegation, which also contained the investigator’s following recommendations:

1. Two (2) days suspension without pay contrary to Section 5(3)(d) of the Nova Scotia Police Act.
2. Period of three (3) months close supervision contrary to Section 5(3)(f) of the Nova Scotia Police Act.
3. Written reprimand placed in Officer Taylor’s file for a period of one year contrary to Section 5(3)(g) of the Nova Scotia Police Act

Subsequently, by way of a Form 12 Disposition of Internal Disciplinary Proceedings, Chief MacLean rendered his decision, finding that Constable Taylor had committed a disciplinary default of insubordination contrary to Section 5(1)(b)(i) of the Nova Scotia Police Act Regulations. The Constable was fined \$326.00 with the payment method to be worked out with Deputy Chief Rogers.

On August 3, 2001 Constable Taylor appealed Chief MacLean's decision to the Nova Scotia Police Review Board by filing a Form 13 Notice of Review. Consequently, the matter came before the Board for hearing on August 22 and 23, 2002, in Truro, Nova Scotia. Mr. David Fisher appeared on behalf of Constable Todd Taylor, and Mr. John Rafferty represented Truro Police Chief Ken MacLean.

No preliminary jurisdictional matters were brought before the Board and the Board finds that it has jurisdiction to hear this matter.

The Complainant, Sergeant Greg Densmore, is in charge of the Truro Police Service's "C" Platoon, overseeing a corporal and four constables, having been promoted to his present position approximately one month prior to the date of incident.

On February 2, 2001 Sergeant Densmore was working the night shift with platoon members Corporal Jesse Rowley and Constable Colin Charlesworth. Constable Taylor was the scheduled police dog handler on the shift and was also under Sergeant Densmore's command that evening.

At 11:45 p.m., Sergeant Densmore and Corporal Rowley were called to investigate a sexual assault case on Harmony Road in Truro. At almost the same time, Constable Charlesworth and Constable Taylor attended at a disturbance at the Engine Room Lounge in downtown Truro. While Sergeant Densmore and Corporal Rowley were at the Harmony Road residence, they received a backup request from the two Constables and immediately headed to the downtown area to assist.

In his evidence before the Board, Sergeant Densmore stated that between the time they left the Harmony Road residence and arrived downtown, four more calls for backup had been received, along with a radio transmission from the dispatcher, advising them to go to Hero's Pub, directly across the street from the Engine Room Lounge.

When Sergeant Densmore and Corporal Rowley arrived at the scene, one man was already handcuffed in the back of a police car and was observed kicking at the interior screen in the police car. The prisoner was peppered sprayed.

Sergeant Densmore and Corporal Rowley then transported the prisoner to the Colchester Correctional Centre, where they were later joined by Constables Taylor and Charlesworth, who had brought a second individual to the jail and where some initial conversation took place between the officers, concerning the type of charges that should be laid against the two prisoners.

Generally, Constables Charlesworth and Taylor were of the view that the less serious **Liquor Control Act** was the appropriate charging statute, while Sergeant Densmore favored the

more serious creating a disturbance provisions of the Criminal Code.

As Sergeant Densmore and Corporal Rowley were leaving the Correctional Centre to respond to another call, Sergeant Densmore overheard Constable Taylor comment to Constable Charlesworth, to the effect, that Sergeant Densmore was under too much stress and “couldn’t handle (it)”. It was Sergeant Densmore’s evidence that he heard the comment even though his car was running and the doors and windows were closed. Sergeant Densmore responded over the radio to Constable Taylor as follows:

“If you’ve got a problem with me Taylor, you can take it up later”.

In apparent response to that remark, Constable Taylor approached Sergeant Densmore’s car, motioned for him to lower the window, and advised , that if the Sergeant had something to say to him, he should say it to his face and not over the radio. According to Sergeant Densmore, Constable Taylor said that Sergeant Densmore did not deserve his Sergeant stripes and that he was being “unprofessional” in his handling of the night’s events, an apparent reference to the earlier discussion about what charges should be laid. In response, Sergeant Densmore told Constable Taylor that he had another call to go on and he and Corporal Rowley then drove off.

The next contact between the two officers occurred approximately 20 minutes later, back at Police Headquarters. Sergeant Densmore was meeting with Constable Charlesworth in the Staff Sergeant’s office when Constable Taylor opened the door and asked for some forms. When he turned to leave, Constable Taylor allegedly stated that “this” was not over yet and he would be

taking it up with the Chief.

After Constable Charlesworth left his meeting with Sergeant Densmore, Corporal Rowley entered the Staff Sergeant's office and while he and Sergeant Densmore were discussing the evening's events, Constable Taylor came to the door a second time and advised Sergeant Densmore that they were going to discuss the matter "now" with an impartial person, presumably Corporal Rowley, present.

The conversation proceeded and it was Sergeant Densmore's evidence that Constable Taylor told him that he was "wrong" on the issue of the appropriate charges, as he hadn't been present at the relevant time, that Sergeant Densmore owed him an apology and had been a "fucking coward" in relation to the incident. He went on to say that as he and not Sergeant Densmore was the arresting officer, the Sergeant did not have the right to "dictate" to him or "make him lay a charge".

Sergeant Densmore stated Constable Taylor told him that Corporal Rowley and Constable Charlesworth had lost all respect for him and that other members were questioning his professionalism. According to Sergeant Densmore, the Constable's demeanour at the time was agitated, confrontational and that his voice rose as the conversation continued.

According to Sergeant Densmore, Constable Taylor challenged him to charge him with insubordination, dared him to take the matter up with the Chief and added that if he did, all of the "dirty laundry" would be aired but if the Sergeant wanted to "rumble" to "let's get it on". It was the

Sergeant's evidence that the Constable motioned with both thumbs directed upward as he made the "rumble" comment and at that moment, he thought the Constable might get physical with him. When Constable Taylor left the office, Sergeant Densmore overheard him state, "Fucking Rookie Sergeants".

A short time later, when Constable Taylor came into the office again, Sergeant Densmore indicated to the Board that he told him to leave, at which point Constable Taylor apparently said to him, "Who the fuck do you think you are, the Supreme Commander or something?" Sergeant Densmore stated he told Constable Taylor several times to leave the office before the Constable complied. Sergeant Densmore stated he had no further contact with Constable Taylor during the remainder of the shift.

In response to questions from the Board, Sergeant Densmore indicated that the actual charges laid against the two men arrested that night in relation to the incident at the Engine Room Lounge and Hero's Pub, were under Section 87(1) of the **Liquor Control Act**, intoxication in a public place. Due to the difficult circumstances of the arrest, it was the Sergeant's feeling that charges of causing a disturbance and possibly resisting arrest would have been more appropriate. It was his view that the physical force required to get the prisoner into and out of the police vehicle, coupled with the prisoner's attempts to kick out the car screen, requiring pepper spraying, would have merited more serious charges.

Under cross examination by Mr. Fisher, Sergeant Densmore stated it was cold the night of

February 2, 2001 and that the streets had become very slippery. As a result, Corporal Rowley had a difficult time keeping the police car on the road while they hurried to respond to Constables Charlesworth and Taylor's back up requests.

Sergeant Densmore stated he had no problem with the prisoner being pepper sprayed in the circumstances, as he believed the prisoner could have injured himself, or damaged the vehicle if he were not brought under control.

Sergeant Densmore stated that he learned what charges were to be laid against the prisoner from Constable Charlesworth at the lockup facility. It was his evidence that while he told the Constable that he did not agree with the decision to go with the less serious charges, he did not order either Constable Charlesworth or Constable Taylor to lay other charges. He did agree that he cautioned them that they would have to face any "backlash" if a complaint were filed about police brutality. Sergeant Densmore acknowledged that he did become upset while speaking to Constable Charlesworth about the charges, telling the Constable that "if he didn't like it he could go upstairs and get off of the shift". Sergeant Densmore agreed that Constables Taylor and Charlesworth were the arresting officers and accordingly, were the appropriate authorities to make that decision as to charges.

Corporal Jessie Rowley testified that he had assisted Constable Charlesworth and Constable Taylor in arresting the second individual at Hero's Pub. He stated that both prisoners had resisted

the arrest and that when he and Sergeant Densmore arrived at the Correctional Centre, the arresting officers advised him that the charges would be intoxication in public.

Corporal Rowley stated that he did hear Constable Taylor say something to Constable Charlesworth about Sergeant Densmore being “stressed out” and also heard Sergeant Densmore’s response to Constable Taylor over the radio. The Corporal stated he witnessed Constable Taylor speaking to Sergeant Densmore at the car window, telling him that the use of the car radio was “unprofessional” and showed “poor radio etiquette”. Sergeant Densmore replied “enough is enough” and then he and Corporal Rowley drove away.

When they returned to the police station, while Corporal Rowley recalled Sergeant Densmore calling Constable Charlesworth into the Staff Sergeant’s office, he did not hear their conversation. When Constable Charlesworth left the office, Corporal Rowley entered , intending to review the sexual assault case with Sergeant Densmore. It was Corporal Rowley’s evidence that Constable Taylor then knocked on the door, entered the room and advised Sergeant Densmore he wanted to talk to him “now”, while Corporal Rowley was there, so that “cooler heads would prevail.”

Corporal Rowley stated Constable Taylor then told Sergeant Densmore that if he wanted to charge him with insubordination they should “get it on”. At that point, Corporal Rowley was concerned about a possible physical confrontation between the two, as both officers were raising their voices and Sergeant Densmore was getting “red in the face”, while Constable Taylor was

“moving back and forth” and “the veins on his neck were sticking out.” In an effort to cool things down, Corporal Rowley rapped on the table to divert both officers from escalating the situation further.

Corporal Rowley recalled Constable Taylor saying to Sergeant Densmore, that “as far as I am concerned you do not deserve the stripes’, with Constable Taylor then telling the Sergeant, “go ahead and charge me, and the dirty laundry will be aired out upstairs.” Constable Taylor then left the office.

As he and the Sergeant were continuing their conversation, Constable Taylor entered the office a second time and Sergeant Densmore directed him to leave, advising that he was having a private conversation with Corporal Rowley. Sergeant Densmore repeated the direction twice before Constable Taylor said “whatever” and then left.

Corporal Rowley acknowledged Constable Taylor called Sergeant Densmore a “fucking coward”, and advised the Sergeant he would be a fool to file a complaint against him. He also recalled Constable Taylor motioning to Sergeant Densmore with his thumbs raised up and telling him if he wanted to rumble to” let’s get it on”. Corporal Rowley recalled that before Constable Taylor left the office, he told Sergeant Densmore “to do what he had to do.”

Corporal Rowley stated that Sergeant Densmore subsequently apologized to him for putting

him in the awkward position of having to intervene between himself and Constable Taylor.

On questioning from Mr. Fisher, Corporal Rowley stated he did not think that Sergeant Densmore's comment over the radio to Constable Taylor was appropriate, however, he acknowledged that anyone overhearing the transmission would not necessarily know the two were upset with each other.

In his evidence before the Board, Truro Chief Kenneth MacLean stated that the police command structure is a paramilitary style, in that each level looks up the line for direction, an important mechanism in maintaining order. Chief MacLean agreed with Sergeant Densmore's decision to take Corporal Rowley, as a second officer on the sexual assault investigation that evening and stated that the number of possible calls during any shift could not be foreseen. The Chief stated he was the authority for deciding whether a disciplinary default had occurred and had fined Constable Taylor \$326.00 for the offence, representing 15 hours of paid regular work.

Chief MacLean was aware of the bad blood between Constable Taylor and Sergeant Densmore, and had previously arranged a mediation between the two that had proved unsuccessful. Chief MacLean stated that insubordination was an unusual occurrence within the Truro Police Department and that this fact had reckoned in his decision to lower the penalty recommended by the Deputy Chief .

At the time of the incident, Constable Colin Charlesworth had been working at the Truro Police Department for two years, having previously served with the Charlottetown Police Department for three years. Constable Charlesworth stated that on February 2, 2001 he responded to a call at the Engine Room Lounge concerning an individual who was causing a disturbance. When the Constable arrived at the scene, people directed him towards Hero's Pub directly across the street.

Constable Charlesworth stated the man he arrested was very intoxicated but did not give him any trouble when he was placed in the police car. It was the Constable's evidence that the second person arrested on scene was agitated, wanting to fight with the first individual. Constable Charlesworth stated that the crowd were yelling at him and Constable Taylor and beginning to surround them. At this point, the two officers radioed for back up because Constable Taylor's vehicle was the canine unit and not equipped for transporting prisoners.

Constable Charlesworth stated they took the second individual into custody when Sergeant Densmore and Constable Rowley arrived and because the prisoner was resisting arrest, he was pepper sprayed

While at the Correctional Centre, the Constable spoke with Sergeant Densmore regarding the charges to be laid. It was Constable Charlesworth's opinion that he did not have the requisite grounds to charge his prisoner with obstruction or resisting arrest. Sergeant Densmore strongly disagreed with this view. Constable Charlesworth responded by advising Sergeant Densmore that

he “did not appreciate being yelled at,” with Sergeant Densmore’s response being, that if he didn’t like it, he should “get his shift changed”. Constable Charlesworth stated he recalled Constable Taylor stating something about the stress getting to Sergeant Densmore.

Later, back at the Police Station, Constable Charlesworth spoke again with Sergeant Densmore, in an effort to explain why he chose not to lay the more serious charges against the person he arrested that night and noting that Constable Taylor had been the arresting officer for the other individual involved. Constable Charlesworth suggested that maybe Sergeant Densmore should speak to Constable Taylor about reviewing those particular charges. It was Constable Charlesworth’s evidence that Sergeant Densmore subsequently apologized to him about the heated exchange at the Correction Centre and that he had accepted that apology.

When questioned by the Board, Constable Charlesworth acknowledged that if he had been the arresting officer for the second individual, he would have considered charging him with the more serious charge of resisting arrest.

The final witness, Constable Todd Taylor stated that on the evening in question, he responded to the original call at the Engine Room Lounge. When he arrived at the location, there was an individual that had been evicted from the bar and for some reason unknown to the Constable, had apparently released a dog from a car. This individual then threw the leash at a passing car. The passengers of that car stopped and were upset.

Constable Taylor stated that once Constable Charlesworth arrived, that situation was resolved but then a second commotion occurred across the street at Hero's Pub. Constable Taylor stated he knew the individual involved in the Hero's Pub situation and was also aware of certain domestic problems he was having.

Upon arriving at Hero's Pub, this particular person appeared very upset and had apparently just hit someone in the face. Consequently, Constable Taylor arrested him. The man made no attempt to resist. The individual that had been assaulted was also upset and the bartender asked Constable Taylor to remove him from the premises. Constable Taylor stated that he did not do so right away because he did not feel putting a prisoner in the back of the canine unit vehicle he was driving that night was an option.

Once Sergeant Densmore and Corporal Rowley arrived at the scene, they did make the arrest and while Constable Taylor acknowledged that the person did resist, in his opinion, it was not "in the extreme". Constable Taylor was aware this person had been assaulted, was understandably upset and, in his view, the bartender was not interested in pressing charges. Constable Taylor did not feel that it was necessary for the individual to be pepper sprayed.

At the Correctional Centre, Constable Taylor felt Sergeant Densmore was inappropriately pressing Constable Charlesworth to lay other charges because he and Constable Charlesworth were the first officers at the scene and consequently, had the information needed to assess what charges were appropriate. Constable Taylor stated that Sergeant Densmore told him that, "we traveled like hell to get to you guys and now you won't lay criminal charges to cover our asses. We had to

pepper spray that guy and we have to be able to justify it.”

To borrow from Mr. Fisher’s submission on behalf of Constable Taylor, the events of February 2, 2001 between Sergeant Densmore and Constable Taylor were “not the way things should have gone” between two fellow officers. The Board is compelled to note that the animosity and intensity of ill will between the two officers is presenting real obstacles to the efficient and professional delivery of police services when the two are working together.

That being said the Board notes the following:

1. Sergeant Densmore and Constable Taylor both have reputations as good police officers.
2. Constable Taylor has no previous disciplinary record.
3. Sergeant Densmore and Constable Taylor at one time were best friends but prior to the February 2, 2001 incident had a falling out, resulting in a seriously strained relationship.

The essential facts of this case are not in dispute. While the precise words spoken in the several heated exchanges that evening between Sergeant Densmore and Constable Taylor vary slightly in witnesses’ testimony, the stark fact of Constable Taylor’s clear disrespect and flagrant disregard for Sergeant Densmore and his position as a senior ranking officer is unassailable.

Moreover, to the extent there is any contradiction between the evidence of Sergeant Densmore, Corporal Rawley and Constable Taylor, the Board accepts Sergeant Densmore’s and Corporal Rawley’s evidence.

The Board finds as fact that Constable Taylor was in a state of agitation arising from the stressful situation at Hero's Pub and consequently, became belligerent and purposely antagonistic with his Sergeant during the shift. Although Constable Taylor had some basis to negatively assess the conduct of Sergeant Densmore on the night in question, the Board finds that is irrelevant to its consideration of the issue of insubordination presently before it.

The Board notes that Constable Taylor is a seasoned and capable police officer. Sergeant Densmore was fairly new in the position of Sergeant and there was a strained personal relationship between the two. Constable Taylor had the opportunity to look past the strained personal relationship and support his Sergeant to do a better job. Instead, he chose to turn fairly minor irritants into a significant attack on the integrity of Sergeant Densmore.

Without repeating the evidence of Sergeant Densmore and Corporal Rawley, the Board finds that:

1. Constable Taylor was disrespectful and insubordinate at the Colchester County Correctional Centre.
2. Constable Taylor was exceptionally disrespectful and insubordinate in the confrontation/meeting in the Staff Sergeant's office.

Both John Rafferty on behalf of the Chief of Police and David Fisher on behalf of the Board provided excellent legal authorities to the Board on what conduct is or is not insubordination under particular circumstances. However, the Board finds that Constable Taylor was so completely insolent and insubordinate, that no nuances in the definition of insubordination could affect the

outcome on these proceedings. The Board does, however, refer specifically to Collective Agreement Arbitration Canada, 3<sup>rd</sup> Ed. By Earl Edward Palmer, Professor of Law, Western Ontario at 7.39, p 322 Professor Palmer states as follows:

“Abusive language towards superiors is regarded as insubordinate and is considered a more serious offence than when directed against fellow workers.”

The Board agrees with Mr. Fisher that there was not the direct refusal to obey an order, and therefore there is not insubordination in that respect. There was evidently abusive language; there was disrespectful language; there was insubordinate language. A police officer in this Province has an obligation in his bearing, his language and his attitude to be respectful of his senior officers. Constable Taylor was not respectful to Sergeant Densmore.

The Board therefore makes a determination that Constable Taylor was insubordinate within the meaning of Nova Scotia Police Act Regulations 5(1)(b)(i) which provides as follows:

A member of a Police force commits a disciplinary default when the member

- (b) is insubordinate by
- (i) word or action;

The Board will address concerns expressed by Constable Taylor regarding the actions of Sergeant Densmore as follows:

1. Constable Taylor is concerned as to whether or not a prisoner should have been pepper sprayed in a police cruiser at the Hero’s Pub.

The Board agrees with Constable Taylor that this was inappropriate and contrary to Standard

Operational Procedures Regarding Use of Force in the Province of Nova Scotia. Consequently, the Board refers this to Chief MacLean for a review as to whether or not his officers are properly trained in the limitations in the use of pepper spray.

2. Constable Taylor was upset because of a perception that Sergeant Densmore was ordering that the charges be laid other than under the Liquor Control Act, S.87(1).

The Board finds as fact that Sergeant Densmore made recommendations only and that Constable Taylor's perception that orders were being given is wrong. The Board does accept that Sergeant Densmore may have been somewhat insistent in his recommendations but the Board has no difficulty with that. If a senior officer believes that a junior officer may not be properly assessing whether or not particular charges should be laid, the senior officer should put the junior officer to the test as regards the junior officer's assessment of the file.

3. Constable Taylor was upset that Sergeant Densmore had responded over the radio to Constable Taylor's comments at the Correctional Centre. He argued that this was a personnel matter which ought to have been handled differently.

The Board finds this position untenable. All that Sergeant Densmore did was tell Constable Taylor over the radio that he would respond to Constable Taylor's disrespectful comments at a later time. Sergeant Densmore was off to respond to another call and had no time to confront Constable Taylor at that time.

The Board has determined that the penalty for Constable Taylor in this case ought to be twofold and orders as follows:

- (a) That the absence of an apology directed by Constable Taylor to Sergeant Densmore and an undertaking to be respectful and supportive of his Sergeant, Constable Taylor

will be suspended for seven days without pay; and

- (b) If Constable Taylor will provide a written apology through Chief MacLean to Sergeant Densmore and satisfy Chief MacLean that he recognizes the seriousness of his insubordination, then the Board authorizes Chief MacLean to reduce the suspension to two days without pay.

There was no request for costs by either party, therefore, costs in this matter have not been considered or awarded.

**DATED** at Halifax, Nova Scotia this      day of December, 2002

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**BRIAN CREIGHTON**  
Chair

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**ORVILLE SYMONDS**  
Member

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**MARION FERGUSON**  
Member

Distribution:

Constable Todd Taylor - Truro Police Service  
Mr. David Fisher - Solicitor for the named officer  
Mr. John Rafferty - Solicitor on behalf of Chief K. MacLean  
Chief Ken MacLean - Truro Police Service  
Mr. Brian Creighton - Chair NS Police Review Board  
Ms. Marion Ferguson - Member, NS Police Review Board  
Mr. Orville Symonds - Member, NS Police Review Board

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An appeal in Form 13 by  
**CONSTABLE TODD TAYLOR**  
and a decision by Chief K.C.  
MacLean against **SERGEANT**  
**GREG DENSMORE** of the Truro  
Police Service before the Nova Scotia  
Police Review Board.

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**D E C I S I O N**

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Before:

Mr. Brian Creighton  
Ms. Marion Ferguson  
Mr. Orville Symonds